

SPECIAL CIVIL APPLICATION No 6171 of 1999

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereuJJJJJ : NO

[illegible]

5. Whether it is to be circulated to the Civil Judge? : NO
Nos. 1 to 5 No

NAGINBHAI GULABBHAI PATEL

Versus

DIVISIONAL CONTROLLER

Appearance:

MR BG JANI for Petitioner

MR KM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 15/12/1999

ORAL JUDGEMENT

Heard learned Advocate for the parties. With their consent the petition is finally disposed of today.

The petitioner was employed as a conductor in the service of the respondent corporation. He was dismissed from the service in departmental proceedings. The Labour Court by its judgment and award dated 5.11.1997 set aside

the punishment of dismissal and ordered the petitioner to be reinstated on his original post but as a fresh appointee without backwages. The said award has not been

challenged by either party and it has become final. The respondent corporation in compliance with the said award has reinstated the said petitioner but the grievance of the petitioner is that he has been appointed as a daily wager while he is entitled to be appointed as confirmed employee. It is contended on behalf of the respondent that since the petitioner was initially appointed as daily wage conductor he was required to be appointed as daily wage conductor on his reinstatement. The learned Advocate for the petitioner relies on the order dated 16.4.1999 made by R.M.Doshit,J in Special Civil Application No.5050 of 1998 in which it was held that the reinstatement on original post necessarily means that the delinquent should be reinstated in the same post as he was holding on the date of dismissal from service and in that case since the petitioner was a confirmed employee of the corporation on the date of dismissal from service, he was ordered to be reinstated as confirmed conductor. In the present case also it is not in dispute that on the date of dismissal from service the petitioner was a confirmed employee of the corporation. He is therefore entitled to be reinstated in service as confirmed conductor but since the Labour Court directed him to be reinstated as a fresh appointee it means that his appointment as confirmed conductor will be a fresh appointment without continuity of service. The corporation shall issue necessary corrigendum to the impugned order within a period of six weeks. The corporation shall also pay difference of salary to the petitioner within a period of four weeks thereafter. Rule made absolute to the aforesaid extenly only. No order as to costs.

m.m.bhatt